

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DR. MAGDY FOUAD, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

ISILON SYSTEMS, INC., et al.,

Defendants

No. C07-1764 MJP

CLASS ACTION

ORDER AND FINAL JUDGMENT

On the 5th day of March, 2010, a hearing having been held before this Court to determine: (a) whether the above-captioned federal securities class action (the “Action”) satisfies the applicable prerequisites for class action treatment under Rule 23 of the Federal Rules of Civil Procedure; (b) whether the terms of the proposed settlement (“Settlement”) described in the Stipulation of Settlement dated October 23, 2009 (the “Stipulation”) are fair, reasonable and adequate, and should be approved by the Court; (c) whether the proposed allocation of the Settlement fund (the “Plan of Allocation”) is fair and reasonable and should be approved by the Court; (d) whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Action on the merits and with prejudice, and to determine whether the release of the Released Claims as against the Released Persons, as set

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LAW OFFICES OF
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1 forth in the Stipulation, should be ordered; (e) whether the application of Lead Counsel for an
2 award of attorneys' fees and reimbursement of expenses should be approved; and (f) such other
3 matters as the Court might deem appropriate; and

4 The Court having considered all matters submitted to it at the hearing held on March 5,
5 2010 and otherwise; and

6 It appearing that a Notice of Proposed Settlement of Class Action, Motion for Attorneys'
7 Fees and Reimbursement of Expenses and Settlement Fairness Hearing ("Notice") substantially
8 in the form approved by the Order for Notice and Hearing dated November 2, 2009 was mailed
9 to all persons and entities reasonably identifiable who purchased the common stock that is the
10 subject of the Action during the Class Period, except those persons and entities excluded from
11 the definition of the Class; and

12 It appearing that a Summary Notice of Pendency and Proposed Settlement of Class
13 Action ("Summary Notice") substantially in the form approved by the Court in the Order for
14 Notice and Hearing was published pursuant to the specifications of the Court, and that a website
15 was used for further availability of the Notice to the Class; and

16 It appearing that there are no objections to the Settlement or the Plan of Allocation; and

17 Given that no Class Member has filed a request for exclusion; NOW, THEREFORE, IT
18 IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

19 1. The Court has jurisdiction over the subject matter of the Action, Lead Plaintiff,
20 all Class Members and Defendants.

21 2. Unless otherwise defined herein, all capitalized terms used herein shall have the
22 same meanings as set forth and defined in the Stipulation.

23 3. The Court finds that the prerequisites for a class action under Rule 23(a) and
24 (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of
25 Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are
26 questions of law and fact common to the Class; (c) the claims of the Lead Plaintiff are typical of

1 the claims of the Class he seeks to represent; (d) Lead Plaintiff fairly and adequately represents
2 the interests of the Class; (e) the questions of law and fact common to the members of the Class
3 predominate over any questions affecting only individual members of the Class; and (f) a class
4 action is superior to other available methods for the fair and efficient adjudication of the
5 controversy.

6 4. The Court hereby finds that the Notice distributed to the Class provided the best
7 notice practicable under the circumstances. The Notice provided due and adequate notice of
8 these proceedings and the matters set forth herein, including the Settlement and Plan of
9 Allocation of the Settlement Fund, to all persons and entities entitled to such notice, and the
10 Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure,
11 Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7) as amended by
12 the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law.
13 A full opportunity has been offered to the Class Members to object to the proposed Settlement
14 and to participate in the hearing thereon. Thus, it is hereby determined that all Class Members
15 (none of whom timely elected to exclude themselves) are bound by this Order and Final
16 Judgment.

17 5. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and
18 for purposes of the Settlement only, the Court hereby certifies the Action as a class action on
19 behalf of all persons or entities who purchased or otherwise acquired Isilon common stock Isilon
20 between December 14, 2006 and November 8, 2007, inclusive, including all persons or entities
21 who acquired shares of Isilon common stock pursuant and/or traceable to Isilon's December
22 2006 initial public offering, and who were damaged thereby. Excluded from the Class are the
23 Defendants; any officers or directors of Isilon during or after the Class Period; any corporation,
24 trust or other entity in which any Defendant has a controlling interest; the members of the
25 immediate families of Barry J. Fidelman, Elliott H. Jurgensen, Jr., Gregory L. McAdoo,
26 Matthew S. McIlwain, Sujal M. Patel, James G. Richardson, William D. Ruckelshaus, Stuart W.

1 Fuhlendorf or Steven S. Goldman (the “Individual Defendants”) or their successors, heirs,
2 assigns and legal representatives; and venture capital firms Madrona Venture Group, Atlas
3 Venture, Atlas Venture Fund V LP, Atlas Venture Entrepreneurs Fund V LP, Atlas Venture
4 Associates V LP, Sequoia Capital, Sequoia Capital X, Sequoia Technology Partners X LP,
5 Sequoia Capital X Principals Fund LLC, and SC X Management LLC, and any of their
6 principals.

7 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of
8 the Settlement only, Plaintiffs are certified as class representatives and Lead Plaintiff’s selection
9 of Cohen Milstein Sellers & Toll PLLC as counsel for the Class is approved.

10 7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Settlement is
11 approved as fair, reasonable and adequate, and in the best interests of the Class. Plaintiffs and
12 Defendants are directed to consummate the Settlement in accordance with the terms and
13 provisions of the Stipulation.

14 8. The Action is hereby dismissed with prejudice and without costs.

15 9. Plaintiffs and members of the Class, on behalf of themselves and each of their
16 respective past or present subsidiaries, affiliates, parents, successors and predecessors, estates,
17 heirs, executors, administrators, and the respective officers, directors, shareholders, agents, legal
18 representatives, spouses and any persons they represent, shall, with respect to each and every
19 Released Claim, release and forever discharge, and shall forever be enjoined from prosecuting,
20 any Released Claims against any of the Released Persons, whether or not they have submitted a
21 Proof of Claim.

22 a) “Released Claims” shall mean any and all claims, debts, demands, rights or causes of
23 action or liabilities whatsoever, whether based on federal, state, local, statutory or
24 common law or any other law, rule or regulation, whether fixed or contingent, accrued or
25 un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured,
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1 whether class, and/or individual in nature, including both known claims and “Unknown
2 Claims” (as defined in the Stipulation of Settlement), (1) that have been asserted in this
3 Action by Plaintiffs against any of the Released Persons , or (2) that could have been
4 asserted in this Action, or in any other action or forum by Plaintiffs and/or the members
5 of the Class or any of them against any of the Released Persons which arise out of or are
6 based upon or relate in any way to the allegations, transactions, facts, matters or
7 occurrences, representations or omissions involved, set forth, or referred to in the Action
8 and which related to the purchase or acquisition of Isilon common stock during the Class
9 Period. Released Claims does not include any claims asserted in the derivative action, *In*
10 *re Isilon Systems, Inc. Derivative Litigation*, 08-2-09536-3 SEA, pending in Washington
11 Superior Court in and for King County.

12 b) “Released Persons” means each and all of the Defendants and their Related Parties.
13 “Related Parties” means each of Defendants’ past or present subsidiaries, parents,
14 successors and predecessors, officers, directors, shareholders, partners, agents,
15 employees, attorneys, insurers, and any person, firm, trust, corporation, officer, director
16 or other individual or entity in which any Defendant has a controlling interest or which is
17 related to or affiliated with any of the Defendants, and the legal representatives, spouses
18 heirs, successors in interest or assigns of the Defendants.

19 10. Upon the Effective Date of this Settlement, each of the Defendants and related
20 Parties, on behalf of themselves and their successors and assigns, shall release and forever
21 discharge each and every of the Settled Defendants’ Claims, and shall forever be enjoined from
22 prosecuting the Settled Defendants’ Claims.

23 11. The Court finds that all Parties to the Action and their counsel have complied
24 with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings
25 herein.
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1 12. Neither this Order and Final Judgment, the Stipulation, nor any of the
2 negotiations, documents or proceedings connected with them shall be:

3 (a) offered or received against Defendants as evidence of or construed as or deemed
4 to be evidence of any presumption, concession, or admission by any of the Defendants with
5 respect to the truth of any fact alleged by any of the Plaintiffs or the validity of any claim that
6 has been or could have been asserted in the Action or in any litigation, or the deficiency of any
7 defense that has been or could have been asserted in the Action or in any litigation, or of any
8 liability, negligence, fault, or wrongdoing of Defendants;

9 (b) offered or received against Defendants as evidence of a presumption, concession
10 or admission of any fault, misrepresentation or omission with respect to any statements or
11 written document approved or made by any Defendant;

12 (c) offered or received against Defendants as evidence of a presumption, concession
13 or admission with respect to any liability, negligence, fault or wrongdoing, or in any way
14 referred to or for any other reason as against any of the Defendants, in any other civil, criminal
15 or administrative action or proceeding, other than such proceedings as may be necessary to
16 effectuate the provisions of the Stipulation; provided, however, that if the Stipulation is
17 approved by the Court, Defendants may refer to it to effectuate the liability protection granted
18 them hereunder including to support a defense of *res judicata*, collateral estoppel, release, good
19 faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue
20 preclusion or similar defense or counterclaim;

21 (d) construed against Defendants or the Class as an admission or concession that the
22 consideration to be given hereunder represents the amount which could be or would have been
23 recovered after trial; or

24 (e) construed as, or received in evidence as, an admission, concession or
25 presumption against the Plaintiffs or the Class that any of its claims are without merit or that
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1 damages recoverable under any of the complaints filed in the Action would not have exceeded
2 the Settlement Fund.

3 13. The Released Parties may file the Stipulation and/or this Order and Judgment in
4 any action that may be brought against them in order to support a defense or counterclaim based
5 on principles of res judicata, collateral estoppel, full faith and credit, release, good faith
6 settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion
7 or similar defense or counterclaim.

8 14. The Plan of Allocation is approved as fair and reasonable, and Lead Counsel
9 and the Claims Administrator are directed to administer the Stipulation in accordance with its
10 terms and provisions.

11 15. A separate order shall be entered to approve Lead Plaintiff's Counsel's
12 application for fees and reimbursement of costs and expenses as allowed by the Court. The
13 finality of this Order and Final Judgment shall not be affected, in any manner, by rulings that the
14 Court may make on the Plan of Allocation or Lead Counsel's application for an award of
15 attorneys' fees and reimbursement of expenses.

16 16. Exclusive jurisdiction is hereby retained over the Parties and the Class Members
17 for all matters relating to the Action, including the administration, interpretation, effectuation or
18 enforcement of the Stipulation and this Order and Final Judgment, and including any application
19 for fees and expenses incurred in connection with administering and distributing the settlement
20 proceeds to the Class Members.

21 17. Without further order of the Court, the parties may agree to reasonable
22 extensions of time to carry out any of the provisions of the Stipulation.

23 18. In the event that the Settlement does not become effective in accordance with
24 the terms of the Stipulation, then this Judgment shall be rendered null and void to the extent
25 provided by and in accordance with the Stipulation and shall be vacated and, in such event, all
26 orders entered, including those certifying a settlement Class, and releases delivered in

1 connection herewith shall be null and void to the extent provided by and in accordance with the
2 Stipulation.

3 19. There is no just reason for delay in the entry of this Order and Final Judgment
4 and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal
5 Rules of Civil Procedure.

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7 SIGNED this 5th day of March, 2010.

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11 Marsha J. Pechman
12 United States District Judge
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